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**BEFORE THE
INTERNATIONAL TRADE ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE
AND THE
UNITED STATES INTERNATIONAL TRADE COMMISSION**

In the Matter of	)	**PETITIONS FOR THE IMPOSITION**
	)	**OF ANTIDUMPING AND**
	)	**COUNTERVAILING DUTIES**
MELAMINE FROM	)	
GERMANY, INDIA, JAPAN,	)	
THE NETHERLANDS, QATAR	)	
AND TRINIDAD AND TOBAGO	)	
	)	**VOLUME VIII: GERMANY**
	)	**COUNTERVAILING DUTIES**
	)	

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PETITIONS FOR THE IMPOSITION OF ANTIDUMPING AND COUNTERVAILING DUTIES ON IMPORTS OF MELAMINE FROM GERMANY, INDIA, JAPAN, THE NETHERLANDS, QATAR, AND TRINIDAD AND TOBAGO

VOLUME VIII: GERMANY COUNTERVAILING DUTIES

I. NAME OF THE COUNTRY IN WHICH THE SUBJECT MERCHANDISE IS MANUFACTURED OR PRODUCED

The country in which the merchandise is produced is the Federal Republic of Germany ("FRG" or "Germany").

II. NAMES AND ADDRESSES OF PRODUCERS AND EXPORTERS OF THE SUBJECT MERCHANDISE BELIEVED TO BENEFIT FROM COUNTERVAILABLE SUBSIDIES

To Petitioner's knowledge there is currently only one producer of subject merchandise in Germany:[1]

LAT Nitrogen Piesteritz GmbH
Möllensdorfer Straße 13
06886 Lutherstadt-Wittenberg, Germany[2]

LAT Nitrogen Piesteritz GmbH ("LAT")[3] was created in 2023, when the AGROFERT Group acquired the nitrogen-related businesses of Borealis AG, including the German melamine producer Borealis Agrolinz Melamine Deutschland GmbH.[4] According to publicly available information, LAT is the only current producer of melamine in Germany, and the only German melamine producer that supplied third parties in 2023.[5] It is therefore reasonable to infer that

[1] LAT Nitrogen Website – Welcome to Piesteritz, provided as **Exhibit VIII-1**; *see also* [ ], provided as **Exhibit VIII-2.**
[2] LAT Nitrogen Website – Welcome to Piesteritz, provided as Exhibit VIII-1.
[3] *See* European Commission, Case M.10834 – AGROFERT / BOREALIS NITRO Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/20041 and Article 57 of the Agreement on the European Economic Area (March 13, 2023), provided as **Exhibit VIII-3**.
[4] This transaction led to the creation of LAT Nitrogen Piesteritz GmbH. *See* LAT Nitrogen website homepage, provided as **Exhibit VIII-4.**
[5] As noted in Volume I, Petitioner believes a second German company, BASF, previously produced melamine for internal consumption but ceased production when it shuttered an ammonia plant and various other facilities in the first quarter of 2023. *See BASF Plans Major Cutbacks at Ludwigshafen*, CHEManager (February 27, 2023), provided as **Exhibit VIII-5**.

LAT accounted for all U.S. imports of German melamine during the presumptive period of investigation ("POI") of January 1, 2023, through December 31, 2023.

LAT has 90,000 tons of capacity to produce melamine in Germany.[6] The melamine facility in Germany [ ].[7] LAT uses urea to produce melamine, [ ].[8] LAT and SKW are co-located in the Agro-Chemie Park Piesteritz.[9] Since 2005, SKW has been owned by AGROFERT Group.[10] SKW and LAT are therefore cross-owned affiliate companies for purposes of this countervailing duty ("CVD") petition, consistent with 19 C.F.R. § 351.525(b)(6)(iv).

III. METHODOLOGY

Under Section 702(b)(1) of the Tariff Act of 1930, as amended (the "Act"), and the Department of Commerce's (the "Department" or "Commerce") regulations, the agency is required to initiate an investigation where a petition (1) alleges a sufficient statutory basis for countervailability, (2) contains information "reasonably available" to the petitioner supporting the allegations, and (3) is filed by an interested party on behalf of a domestic industry.[11] The law does not require a petitioner to prove at the outset of an investigation that a subsidy allegation will be confirmed during the course of the investigation. Rather, an allegation is sufficient if it

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[6] LAT Nitrogen Website – Welcome to Piesteritz, provided as Exhibit VIII-1; *see also* [ ], provided as Exhibit VIII-2. [ ] [ ], provided as Exhibit VIII-2.
[7] [ ], provided as Exhibit VIII-2.
[8] LAT Nitrogen Website – Welcome to Piesteritz, provided as Exhibit VIII-1; [ ], provided as Exhibit VIII-2.
[9] SKW Piesteritz Website – Agro-Chemie Park Piesteritz, provided as **Exhibit VIII-6**. *See also*, SKW Piesteritz Website – List of Companies, provided as **Exhibit VIII-7**.
[10] SKW Piesteritz Website – Our Parent Company, provided as **Exhibit VIII-8.**
[11] *See* 19 U.S.C. § 1671a(b)(l).

contains the statutory elements necessary for the imposition of a countervailing duty and is supported by “reasonably available” information. As explained by the Department:

> To satisfy the “reasonably available” standard, petitioner should consult all available sources including libraries, embassies, and Department of Commerce (DOC) Central Records Unit (Room B-099). In order to demonstrate that all available sources were sought, petitioner should describe in detail its methodology seeking the required information.[12]

This petition has been prepared in a manner consistent with those guidelines. Petitioner examined all reasonably available public sources regarding potentially countervailable subsidies to the melamine industry in Germany. These sources include materials published by Government of Germany (“FRG”) ministries, various European Union (“EU”) entities, press releases, newspaper articles, and publicly available financial reports. To the extent possible, Petitioner has also obtained copies of the laws and statutes associated with the subsidy programs at issue. Petitioner has also reviewed other U.S. countervailing duty investigations involving Germany.

IV. MATERIAL INJURY AND THREAT OF MATERIAL INJURY TO THE DOMESTIC INDUSTRY

Petitioner alleges that the domestic melamine industry is materially injured, and threatened with material injury, by reason of subsidized imports of melamine from Germany. Volume I of this petition contains the argumentation and factual information in support of this allegation.

[12] International Trade Administration, Department of Commerce, Form ITA-336P, Format for Petition Requesting Relief Under U.S. Countervailing Duty Law.

V. IMPORTS OF MELAMINE FROM GERMANY BENEFIT FROM COUNTERVAILABLE SUBSIDIES

As noted above, there is currently only one producer of melamine in Germany, LAT. LAT and its cross-owned input supplier, SKW, benefit from a variety of subsidies including energy subsidies and environmental subsidies.

For purposes of 19 C.F.R. § 351.524(d)(2), the average useful life ("AUL") of renewable physical assets in the chemical industry is 9.5 years.[13] Accordingly, assuming that the POI is calendar year 2023, Petitioner respectfully requests that Commerce investigate any allocable, non-recurring subsidies granted from 2014 through 2023 and any non-allocable, non-recurring subsidies and recurring subsidies provided during the presumptive POI.

VI. ENERGY SUBSIDIES

As the Department has found in other CVD cases involving Germany, the FRG provides various forms of assistance to German companies engaged in energy-intensive production.[14] Energy rates in Germany have long been higher than in many other developed industrial economies,[15] and to ensure that energy-intensive industries in Germany remain competitive, the FRG has adopted several policy initiatives aimed at reducing energy costs for certain types of manufacturers. The FRG's efforts to lower energy costs for and promote the competitiveness of energy intensive industries increased after Russia's invasion of Ukraine in February 2022. The war and ensuing tensions between Russia and Western Europe caused German energy prices to spike, drastically reducing production in Germany's energy-intensive sectors.[16]

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[13] How To Depreciate Property, *Internal Revenue Service*, Pub. 946, p. 100, provided as **Exhibit VIII-9.**

[14] *See Forged Steel Fluid End Blocks From the Federal Republic of Germany: Final Affirmative Countervailing Duty Determination*, 85 Fed. Reg. 80011, (December 11, 2020), and accompanying Issues and Decision Memorandum ("*Fluid End Blocks Final I&D Memo*").

[15] *German manufacturing firms pay much higher electricity prices than American firms*, Center for American Experiment, December 19, 2023, provided at **Exhibit VIII-10.**

[16] *Impact of High Energy Prices on Germany's Potential Output*, International Monetary Fund, June 28, 2023, provided as **Exhibit VIII-11.**

In July 2022, the European Union approved a €5 billion scheme to enable Germany to mitigate the impact of rising input costs on German companies and support the continuation of their activities.[17] Under the scheme, companies that spend at least 3 percent of their turnover on energy will be eligible to receive 30 percent of the price difference compared to 2021 prices, with subsidies capped at €2 million per company.[18] In addition, companies that suffer an operating loss in a given month due to rising energy costs can claim 50 percent of the price difference from the year before in the following month, with a cap of €25 million. The subsidy is limited to 80 percent of the losses incurred.[19] Certain sectors benefit from even higher subsidy rates. Companies in the chemical, glassmaking, steel, and ceramics industries benefit from a higher level of subsidies – specifically, 70 percent of the price difference, capped at €50 million.[20]

Even before Russia's invasion of Ukraine in 2022, the FRG adopted several policies designed to support its energy-intensive industries. Between 2002 and 2007, the FRG introduced its National Strategy for Sustainable Development and its Integrated Climate Protection Program. These programs defined clean energy and climate-related objectives and set an emissions reduction goal of 40 percent below the 1990 level by 2020.[21] According to a 2011 study, "{f}or the regular electricity consumer, taxes and levies on electricity resulting from the electricity tax law, the Renewable Energy Act, and the Combined Heat and Power Act, add up to

[17] *Brussels green lights €5 billion in energy subsidies for German industry*, Euractiv, July 15, 2022, provided as **Exhibit VIII-12**.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Impact of Reductions and Exemptions in Energy Taxes and Levies on German Industry*, CPI Brief, Climate Policy Initiative (Nov. 24, 2011) ("Exemptions in Taxes and Levies on German Industry CPI") at 3, provided as **Exhibit VIII-13.**

56 €/megawatt hour ("MWh"). For the manufacturing industries, however, tax and levy rate reductions can lower the policy-induced component of the electricity price by up to 96%."[22]

Thus, while Germany is generally thought of as a country with high energy costs, the FRG has created a variety of subsidy programs to reduce the energy costs borne by companies in certain manufacturing industries. The Climate Policy Initiative noted that "{t}he potential {electricity} price difference is largest for the largest companies and for those in electricity-intensive sectors."[23] The FRG has designated chemical production "to be particularly energy-intensive."[24] Germany's 26th Subsidy Report establishes in summary form that this patchwork of exemptions and reductions on taxes for energy use continues and is substantial insofar as energy tax reductions and exemptions account for nearly 27 percent by value of the 20 largest tax benefits conferred by the FRG.[25] Because LAT and SKW operate in an energy-intensive industry, it is reasonable to believe that FRG programs enable these companies to reduce their energy costs by paying lower energy taxes, as permitted under the Electricity Tax Act and discussed in greater detail below.[26]

A. Energy Cost Containment Program

In July 2022, the FRG launched a program to support eligible energy and trade intensive companies as a response to rising energy costs due to Germany's dependence on energy imports

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[22] *Id.* at 3.
[23] *Id.* at 4.
[24] "Commission on Growth, Structural Change and Employment," Federal Ministry for Economic Affairs and Energy (BMWi) (January 2019) ("Commission on Growth, Structural Change and Employment") at 35, provided as **Exhibit VIII-14** ("The competitiveness of energy-intensive companies, in particular, depends to a large extent on electricity prices. Sectors that are considered to be particularly energy-intensive under the RESA's {Renewable Energy Sources Act} special equalisation scheme primarily include steel, chemicals and the non-ferrous metals, glass, cement, chalk and paper.").
[25] *See*, "26th Subsidy Report: Federal Government Report on Trends in Federal Financial Assistance and Tax Benefits for the Years 2015-2018," Federal Ministry of Finance (January 24, 2018) ("Germany's 26th Subsidy Report"), provided as **Exhibit VIII-15**.
[26] Electricity Tax Act (StromStG), Federal Ministry of Justice and Consumer Protection (March 24, 1999), published in Federal Law Gazette I p. 378; 2000 I ("Electricity Tax Act"), provided as **Exhibit VIII-16.**

from Russia.[27] This program is known as the Energiekostendämpfungsprogramm ("EKDP"), which translates to Energy Cost Containment Program.[28] The EKDP is administered by the Bundesamt für Wirtschaft und Ausfuhrkontrolle ("BAFA") (the Federal Office of Economics and Export Control).[29] As the BAFA website notes, "{c}ompanies that are particularly affected by high energy costs can apply to BAFA for a subsidy for their natural gas and electricity costs as well as for heating and cooling."[30]

The basis for the program is the Guideline on the Energy Cost Containment Program published by the Federal Ministry for Economic Affairs and Climate Protection ("BMWK").[31] As the BAFA website notes, "the BMWK supports companies that are particularly hard hit by high energy prices as a result of Russia's war of aggression on Ukraine. The aim is to cushion particular hardships in a targeted manner and to avoid situations that threaten the existence of these companies."[32]

Under the EKDP, energy and trade intensive companies across industrial sectors at risk of carbon leakage as identified in Annex I of the EU's Guidelines on State Aid for Climate, Environmental Protection, and Energy, are eligible to receive grants of up to €50 million towards a share of the additional gas and electricity costs incurred from February to September 2022.[33] Annex I of the EU's Temporary Crisis Framework lists 26 sectors that are deemed "particularly

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[27] *Id.*
[28] *Funding program at a glance*, Bundesamt für Wirtschaft und Ausfuhrkontrolle, provided as **Exhibit VIII-17**.
[29] *Id.*
[30] *Id.*
[31] *Id.* The BMWK announcement of the Energy Cost Containment Program, provided as **Exhibit VIII-18**.
[32] *Id.*
[33] *See* European Commission, "State aid: Commission approves €5 billion scheme to support energy and trade intensive companies in context of Russia's invasion of Ukraine" (July 14, 2022), provided as **Exhibit VIII-19.** *See also* European Commission, "Guidelines on State aid for Climate, Environmental Protection and Energy 2022," 2022/c 80/01 (February 18, 2022) at Annex I, provided as **Exhibit VIII-20**.

badly affected."[34] Companies in these 26 sectors are eligible for grants covering 70 percent of the energy cost/price differential, up to €50 million.[35]

The FRG extended the EKDP in November 2022.[36]

The Annex I list includes "manufacture of fertilizers and nitrogen compounds."[37] LAT, and its affiliated input supplier SKW, likely qualified for grants covering 70 percent of the cost-price differential as producers of nitrogen compounds and fertilizers.

The Department initiated an investigation of the EKDP in the second administrative review of *Fluid End Blocks From Germany*.[38] The Department has yet to issue a determination with respect to this program.

1. Financial contribution

This program provides a financial contribution in the form of a direct transfer of funds under Section 771(5)(D)(i) of the Act, 19 U.S.C. § 1677(5)(D)(i), because the FRG provides cash grants to eligible companies.

[34] European Commission, "Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia," 2022/C 131/01 (March 24, 2022) at Annex I, provided as **Exhibit VIII-21.** *See also* €5 billion aid programme launched for energy-intensive industry, Bundesministerium für Wirtshaft und Klimaschutz, (July 14, 2022), provided as **Exhibit VIII-22**; and European Commission, "Guidelines on State Aid for Climate, Environmental Protection and Energy 2022," 2022/c 80/01 (February 18, 2022) at Annex I, provided as Exhibit VIII-20.
[35] €5 billion aid programme launched for energy-intensive industry, Bundesministerium für Wirtshaft und Klimaschutz, (July 14, 2022), provided as Exhibit VIII-22.
[36] Germany extends energy subsidy plan for consumers, companies, Associated Press (November 2022), provided as **Exhibit VIII-23**.
[37] European Commission, "Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia," 2022/C 131/01 (March 24, 2022) at Annex I, provided as Exhibit VIII-21.
[38] *See* Memorandum to Irene Darzenta Tzafolias Regarding Countervailing Duty Administrative Review of Forged Steel Fluid End Blocks from the Federal Republic of Germany ("Fluid End Blocks From Germany") – New Subsidy Allegation (January 8, 2024) at 2-3, provided as **Exhibit VIII-24**.

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E), equal to the amount of the granted funds provided to the recipient companies.

3. Specificity

This program is *de jure* specific within the meaning of Section 771(5A)(D)(i) of the Act, 19 U.S.C. § 1677(5A)(D)(i), because the subsidy is limited by law to only certain qualifying enterprises – *i.e.*, companies at risk for carbon leakage. The program is also *de facto* specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act, 19 U.S.C. § 1677(5A)(D)(iii)(I), because recipients of the subsidy, on an enterprise or industry basis, are limited in number.

B. Reductions In Section 19 StromNEV Surcharge

In the countervailing duty investigation of *Fluid End Blocks From Germany*, the Department considered whether the FRG's provision of allowances for individualized grid fees for certain electricity users under Section 19 of the Electricity Grid Fee Ordinance, or Stromnetzentgeltverordnung ("StromNEV"), constituted the provision of electricity for less than adequate remuneration ("LTAR").[39] The Department found that this did not constitute the provision of electricity for LTAR because the FRG does not direct network operators ("NOs") to reduce grid fees for qualifying customers.[40] Rather, the Department found that the provisions of Section 19 of StromNEV simply permit qualifying companies to enter into mutually beneficial agreements with NOs that reflect the individual company's contribution to grid stability.[41]

[39] *See Forged Steel Fluid End Blocks From the Federal Republic of Germany: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 Fed. Reg. 31454 (May 26, 2020), and accompanying Preliminary Issues and Decision Memorandum ("*Fluid End Blocks Prelim I&D Memo*") at 28.
[40] *Id.*
[41] *Id.*

However, another aspect of StromNEV Section 19 results in a countervailable subsidy – namely, the StromNEV Section 19 Surcharge. The StromNEV Section 19 Surcharge is a mechanism through which NOs are compensated for losses incurred, through the provision of more favorable contracts. As the Department found in *Fluid End Blocks From Germany*, "NOs are compensated for lost revenues by all grid users via a cost reallocation/cost sharing mechanism specified by the provisions of the StromNEV."[42] In particular, StromNEV Section 19 states that transmission system operators ("TSOs") "must reimburse downstream operators of electricity distribution networks from lost revenue resulting from individual network charges," and that the costs associated with these reimbursements "can be passed on proportionately to the end customer as a surcharge on network charges."[43] This is known as the Section 19 Surcharge. However, Section 19 of StromNEV also places caps on the surcharge that can be applied to particular categories of customers. In particular, Section 19 states that, although all customers are assessed the same surcharge for the first 1 million kWh per point of use, (1) final customers exceeding this threshold can only be charged a maximum of €0.05 ct/kWh for volumes exceeding this 1 million kWh threshold; and (2) final manufacturing or railway customers can only be a charged a maximum of €0.025 ct/kWh for volumes exceeding 1 million kWh if their electricity costs in the previous calendar year exceeded four percent of turnover.[44]

TSOs refer to "normal" consumers as category "A" customers, while the latter two sets of customers—for which the FRG mandates privileged status via legislation, as category "B" and "C" customers, respectively.[45] All final customers are required to pay the surcharge under

[42] *Id*.
[43] *See* FRG, "Ordinance on fees for access to electricity supply networks (Electricity Network Fees Ordinance – StromNEV) §19" at Section 2, provided as **Exhibit VIII-25**.
[44] *Id.*
[45] *See, e.g.*, Netztransparenz.de, "Section 19 StromNEV surcharge" (showing annual rates charged by all four German TSOs for category A customers), provided as **Exhibit VIII-26**; Amprion GmbH, "StromNEV Levy," (showing rates for all three customer categories, with rates for categories "B" and "C" matching the FRG mandated

category A for the first 1 million kWh of electricity consumption in a year. In 2023, the surcharge applied for this initial electricity consumption was €0.437 ct/kWh.[46] Consumption category B is for companies in the manufacturing sector whose electricity costs do not exceed four percent of their annual turnover in the preceding calendar year. Consumers in this category exceeding the 1 million kWh threshold can only be charged a maximum of €0.05 ct/kWh.[47] Companies in the manufacturing sector that meet or exceed the four percent annual turnover threshold are classified under category C. Consumers in this category exceeding the 1 million kWh threshold can only be charged a maximum of €0.025 ct/kWh.[48]

The mandated caps operate in the same manner as the Renewable Energy Resources Act or Erneuerbare-Energien-Gesetz ("EEG Program") and the Combined Heat and Power Act or Kraft-Wärme-Kopplungsgesetz ("KWKG Program") that the Department found to be countervailable in the original investigation of *Fluid End Blocks From Germany*.[49] In other words a benefit is provided to consumers in categories B and C because they pay a significantly reduced surcharge. Moreover, the surcharge reduction benefit is greatest, on a per-kWh basis, for the most energy-intensive consumers, which are in category C.

As noted above, SKW is a cross-owned affiliate of LAT, and supplies LAT with the urea used to make melamine. SKW is a significant user of both electricity and natural gas,[50] and thus likely paid a reduced surcharge on its energy purchases.

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caps,) provided as **Exhibit VIII-27**; Transnet BW, "Levy pursuant to Section 19(2), StromNEV," (showing rates for categories "B" and "C" matching the FRG mandated caps,) provided as **Exhibit VIII-28**.
[46] Amprion GmbH, "StromNEV Levy," provided as Exhibit VIII-27.
[47] *Id.*
[48] *Id.*
[49] *Fluid End Blocks Final I&D Memo* at Comments 5 and 6.
[50] *See SKW Stickstoffwerke criticizes government's electricity price plans*, Zeitung Aussiedlerbote (November 10, 2023), provided as **Exhibit VIII-29**, and Germany's SKW Piesteritz mulls force majeure in even of gas shortages, price hikes, ICIS Chemical Business (June 30, 2022), provided as **Exhibit VIII-30**.

The Department initiated an investigation of the Section 19 StromNEV Surcharge Program in the second administrative review of *Fluid End Blocks From Germany.*[51] The Department has yet to issue a determination with respect to this program.

1. Financial contribution

This program provides a financial contribution under Sections 771(5)(B)(iii) and 771(5)(D)(ii) of the Act, 19 U.S.C. §§ 1677(5)(B)(iii) and 1677(5)(D)(ii), in the form of revenue forgone that is otherwise due. Specifically, through its implementing ordinance, the FRG entrusts or directs the TSOs to forgo revenue that is otherwise due by not collecting a portion of the Section 19 StromNEV Surcharge from high-energy consuming customers.

2. Benefit

This program confers a benefit upon recipients under Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E), that is equal to the amount the company would have paid absent the government program.

3. Specificity

This program is *de jure* specific within the meaning of Section 771(5A)(D)(i) of the Act, 19 U.S.C. § 1677(5A)(D)(i), because the subsidy is limited by law to only certain qualifying enterprises (*i.e.*, those with high electricity usage). The program is also *de facto* specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act, 19 U.S.C. § 1677(5A)(D)(iii)(I), because the number of recipients of the subsidy, on an enterprise or industry basis, is limited in number.

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[51] *See* Memorandum to Irene Darzenta Tzafolias Regarding Countervailing Duty Administrative Review of Forged Steel Fluid End Blocks from the Federal Republic of Germany ("Fluid End Blocks From Germany") – New Subsidy Allegation (January 8, 2024) at 2-3, provided as Exhibit VIII-24.

C. 2022 KfW Ukraine, Russia, Belarus ("UBR") Program

Under the UBR program, businesses affected by the Russian war in Ukraine "can receive access to low-interest loans with extensive liability exemption of their regular banks."[52] The German Credit Agency for Reconstruction ("KfW"), a development bank controlled by the German Finance Ministry in consultation with the Economic Ministry, facilitates the program.[53] The KfW grants commercial banks an 80 percent exemption from liability for loans to medium-sized companies (up to EUR 500 million in annual turnover) and a 70 percent exemption from liability for loans to large companies.[54] The loan program has two components: (1) loans granted using the standard process via regular banks, with loan amounts up to €100 million, and (2) individual large-volume syndicated financing for larger companies.[55] The FRG has described the program as "targeted support to the businesses affected" by the Russia-Ukraine war.[56] Applicants must prove they have been affected by either the war or the resulting sanctions against Russia and Belarus, including by "particularly adverse impact from the increase in energy costs (energy costs account for at least 3 percent of 2021's annual turnover)."[57]

Information reasonably available to Petitioner indicates that LAT and its cross-owned input supplier SKW Piesteritz are eligible for UBR loans. First, SKW is a significant consumer of natural gas, with natural gas accounting for about 80 percent of the company's total production costs.[58] Moreover, SKW Piesteritz is Germany's second largest consumer of natural

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[52] *See* FRG Federal Ministry for Economic Affairs and Climate Action, "German Federal Government incrementally rolls out loan package for war-affected businesses" (May 3, 2022), provided as **Exhibit VIII-31.**
[53] *See generally* Christoph Steitz, "Explainer: Germany's new energy heavyweight: state lender KfW," Reuters (February 17, 2023), provided as **Exhibit VIII-32**.
[54] See FRG Federal Ministry for Economic Affairs and Climate Action, "German Federal Government incrementally rolls out loan package for war-affected businesses" (May 3, 2022), provided as Exhibit VIII-31.
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] Germany's SKW Piesteritz mulls force majeure in even of gas shortages, price hikes, ICIS Chemical Business (June 30, 2022), provided as Exhibit VIII-30.

gas after BASF.[59] Second, SKW took out loans with Germany's UniCredit Bank AG and Commerzbank in March 2022, which could have been made under the auspices of the UBR loan program.[60] The loans are reported to be for €40 million with a fixed interest rate and €15 million with floating interest rate.[61] The loans have a five-year maturity and are redeemable in full as at the ultimate maturity date, *i.e.* five years after the funds receipt date by the company.[62]

The Department initiated an investigation of the UBR Loan Program in the second administrative review of *Fluid End Blocks From Germany.*[63] The Department has yet to issue a determination with respect to this program.

1. Financial contribution

This program provides a financial contribution under Sections 771(5)(B)(iii) and 771(5)(D)(i) of the Act, 19 U.S.C. §§ 1677(5)(B)(iii), 1677(5)(D)(i), in the form of a direct transfer of funds. Specifically, the FRG—via the KfW—entrusts or directs private banks to provide low interest loans to eligible companies and facilitates those loans through liability exemptions.

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E)(ii) of the Act, 19 U.S.C. § 1677(5)(E)(ii), that is equal to the difference between the amount the loan recipient pays on the loan and the amount the recipient would pay on a comparable commercial loan.

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[59] *Id.*
[60] AGROFERT Group 2021 Annual Report at 11, provided as **Exhibit VIII-33**.
[61] *Id.*
[62] *Id.*
[63] *See* Memorandum to Irene Darzenta Tzafolias Regarding Countervailing Duty Administrative Review of Forged Steel Fluid End Blocks from the Federal Republic of Germany ("Fluid End Blocks From Germany") – New Subsidy Allegation (January 8, 2024) at 2-3, provided as Exhibit VIII-24.

3. Specificity

This program is *de jure* specific within the meaning of Section 771(5A)(D)(i) of the Act, 19 U.S.C. § 1677(5A)(D)(i), because the subsidy is limited by law to only certain qualifying enterprises (*i.e.*, those with high energy usage). The program is also *de facto* specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act, 19 U.S.C. § 1677(5A)(D)(iii)(I), because the number of recipients of the subsidy, on an enterprise or industry basis, is limited in number.

D. Section 9a Of The Electricity Act (StromStG)

The Electricity Tax Act, or Stromsteuergesetz ("StromStG"), establishes the tax rate on electricity and the conditions for electricity tax relief.[64] As the Department found in *Fluid End Blocks From Germany*, companies engaged in specific manufacturing processes, including the processes to produce chemicals, are eligible for tax rebates under Section 9a of StromStG.[65] The German Customs Administration and its regional Main Customs Offices, under supervision of the Central Customs Authority (collectively, "GCA"), are responsible for executing laws on excise duties.[66] Companies must apply for tax relief under StromStG.[67] Applicants must keep a record that shows that the entity is part of the prescribed industry eligible for relief as specified under Section 9a.[68]

Because LAT and SKW are members of the chemical industry in Germany, they likely benefit from the rebate of electricity taxes under Section 9a of StromStG. The Department has previously found this program to be countervailable.[69]

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[64] StromStG at 147, provided as Exhibit VIII-16.
[65] *Fluid End Blocks Prelim I&D Memo* at 20.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Fluid End Blocks Final I&D Memo* at 6.

1. Financial contribution

This program provides a financial contribution in the form of revenue foregone that is otherwise due, within the meaning of Section 771(5)(D)(ii) of the Act, 19 U.S.C. § 1677(5)(D)(ii).

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E), and Section 351.509(a)(1) of the Department's regulations, 19 C.F.R. § 351.509(a)(1), that is equal to what the recipients would have paid absent the program, less the amount actually paid during the POI.

3. Specificity

This program is *de jure* specific within the meaning of Section 771(5A)(D)(i) of the Act, 19 U.S.C. § 1677(5A)(D)(i), because the subsidy is limited by law to only certain qualifying enterprises (including companies in the chemical industry). The program is also *de facto* specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act, 19 U.S.C. § 1677(5A)(D)(iii)(I), because the number of recipients of the subsidy, on an enterprise or industry basis, is limited in number.

E. Section 9b Of The Electricity Act (StromStG)

The StromStG establishes the electricity tax rate and the conditions for electricity tax relief.[70] Section 9 of the StromStG establishes the conditions for electricity tax exemptions and reductions. Section 9b of the StromStG provides tax relief of €5.13/MWh for electricity that was taxed and used in the manufacturing sector.[71] This tax relief is granted only if the amount of

[70] StromStG at 147, provided as Exhibit VIII-16.
[71] Memorandum to Jeffrey I. Kessler, *Post-Preliminary Analysis of Countervailing Duty Investigation: Forged Steel Fluid End Blocks from the Federal Republic of Germany* (October 21, 2020) ("*Fluid End Blocks from Germany Post-Prelim Memo*") at 7, provided as **Exhibit VIII-34**.

relief in a calendar year exceeds €250.[72] The German Customs Administration and its regional Main Customs Offices, under the supervision of the Central Customs Authority, are responsible for executing laws on excise duties.[73] Companies must apply for tax relief under StromStG. Applicants must keep a record that shows, for the respective relief section, the type, quantity, origin, and exact purpose of the electricity used.[74] Further, applicants must calculate the relief themselves.[75]

LAT and SKW are significant users of electricity and therefore likely benefit from this program. The Department has previously found this program to be countervailable.[76]

1. Financial contribution

This program provides a financial contribution under Section 771(5)(D)(ii) of the Act, 19 U.S.C. § 1677(5)(D)(ii), in the form of revenue foregone that is otherwise due.

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.509(a)(1), that is equal to what the recipients would have paid absent the program, less the amount actually paid during the POI.

3. Specificity

The Department has found this program to be *de facto* specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act, 19 U.S.C. § 1677(5A)(D)(iii)(I), because the tax rebates provided by this program were limited to 33,182 companies, of the 231,063 companies identified by the FRG as being in the manufacturing sector in 2018.[77] Petitioner has not found any

[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Fluid End Blocks Final I&D Memo* at 6.
[77] *Fluid End Blocks from Germany Post-Prelim Memo* at 7-8, provided as Exhibit VIII-34.

information that would indicate that the number of companies using this program has increased relative to the number of companies in the manufacturing sector, such that the firms using the program are no longer limited in number.

F. Section 10 Of The Electricity Act (StromStG)

Under Section 10 of the StromStG, companies in the manufacturing sector can apply for tax relief of up to 90 percent of the electricity tax for electricity used for business purposes, where the amount of tax in any calendar year exceeds €1,000.[78] Tax relief available pursuant to Section 9b of the StromStG may be deducted in such cases, as well as tax free electricity or electricity pursuant to Section 9a of the StromStG. After these deductions are made, the actual tax relief pursuant to Section 10 of the StromStG is then calculated based on the savings on pension contributions.[79] Tax relief is only granted if the applying company proves that it operated an energy management system or was a registered organization pursuant to Article 13 of Regulation (EC) No 1221/2009 for the application year.[80] Additionally, tax relief is only granted if the applying company has fulfilled requirements for energy intensity and for that reason, the FRG must determine every year that the target value for a reduction of energy intensity provided for the application year pursuant to the annex to Section 10 has been achieved or exceeded.[81] The program was established in 2012 and has been in force since January 1, 2013.[82] The tax relief provided under Section 10 was scheduled to expire on December 31, 2023,[83] after the end of the POI.

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78 *Id.* at 8.
79 *Id.*
80 *Id.*
81 *Id.*
82 *Id.*
83 Forged Steel Fluid End Blocks from the Federal Republic of Germany: Government's Section II Response, Second Administrative Review (June 28, 2023) at EDA (10)-01, provided as **Exhibit VIII-35**

LAT and SKW are significant users of electricity and therefore likely benefit from this program. The Department has previously found this program to be countervailable.[84]

1. Financial contribution

This program provides a financial contribution under Section 771(5)(D)(ii) of the Act, 19 U.S.C. § 1677(5)(D)(ii), in the form of revenue foregone that is otherwise due.

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E), and Section 351.509(a)(1) of the Department's regulations, 19 C.F.R. § 351.509(a)(1), that is equal to the amount of the tax savings.

3. Specificity

The Department has found this program to be *de facto* specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act, 19 U.S.C. § 1677(5A)(D)(iii)(I), because the tax rebates provided by this program were limited to 9,409 companies out of the 231,063 companies identified by the FRG as being in the manufacturing sector in 2018.[85] Petitioner has not found any information that would indicate that the number of companies using this program has increased relative to the number of companies in the manufacturing sector, such that the firms using the program are no longer limited in number.

G. Section 51 Of The Energy Tax Act

The Energiesteuergesatz, ("EnergieStG" or "Energy Tax Act") establishes taxes on a wide variety of energy products, such as heating oil and natural gas, and establishes the conditions for tax relief.[86] Under Section 51 of the EnergieStG, companies may apply for tax

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[84] *Fluid End Blocks Final I&D Memo* at 6.
[85] *Fluid End Blocks from Germany Post-Prelim Memo* at 8, provided as Exhibit VIII-34.
[86] "Energy Tax Act (EnergieStG)," Federal Ministry of Justice and Consumer Protection (July 15, 2006), published in the Federal Law Gazette I P. 1534; 2008 I p. 660, 1007 ("Energy Tax Act") at 4, provided as **Exhibit VIII-36.**

relief on energy products if: (1) the company in question is part of the manufacturing industry according to § 2 No. 3 of the Electricity Tax Act of 24 March 1999, most recently amended by Article 2 of the Act of 1 March 2011, and (2) the company is involved in a chemical reduction process, such as the production of urea and melamine.[87] As a result of Section 51 of the Energy Tax Act, manufacturers involved in energy-intensive processes receive total tax reductions on diesel fuel, fuel oil, liquefied natural gas ("LNG"), natural gas, and coal.[88] Companies that produce urea and melamine are enterprises in the manufacturing sector according to § 2, No. 3 of the Electricity Tax Act of March 24, 1999.[89] Thus, LAT and SKW likely benefit from the tax relief provided by Section 51 of the Energy Tax Law. The Department has previously found this program to provide a countervailable subsidy.[90] Petitioner therefore respectfully requests that the Department investigate this program and the extent to which it subsidized the German melamine industry.

1. Financial contribution

This program provides a financial contribution under Section 771(5)(D)(ii) of the Act, 19 U.S.C. § 1677(5)(D)(ii), in the form of revenue foregone that is otherwise due.

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E) and 19 C.F.R. §351.509(a)(1), equal to the amount of the tax savings.

[87] *Id.* at Chapter 5, §51.
[88] "Taxing Energy Use 2018: Using Taxes for Climate Action," OECD (October 15, 2019) at 7, provided as **Exhibit VIII-37.**
[89] *See*, StromStG, at §2 Definitions, provided as Exhibit VIII-16.
[90] *Fluid End Blocks Final I&D Memo* at 7.

3. Specificity

The Department has found this program to be *de jure* specific within the meaning of Section 771(5A)(D)(i) of the Act, 19 U.S.C. § 1677(5A)(D)(i), because the tax benefit provided by this program is limited to certain industrial processes, including the reduction of chemicals.[91]

H. Section 55 Of The Energy Act – Peak Equalization Scheme

As noted above, the EnergieStG establishes taxes on a wide variety of energy products, such as hearing oil and natural gas, and delineates the conditions for tax relief.[92] The Peak Equalization Scheme is a special program enacted by the FRG that provides preferential treatment to certain energy-intensive manufacturers, so as to "avoid endangering the international{ly} competitive position of energy-intensive companies as a result of the eco tax."[93] Chapter 55 of the EnergieStG covers the remissions, reimbursement, and refunding of energy taxes through a number of subsections. Specifically, pursuant to section 55 of the EnergieStG, companies in the "manufacturing sector" can apply for tax relief of: (1) up to 90 percent of the volume of natural gas used, multiplied by a relief rate of €2.28/MWh; (2) the volume of liquefied petroleum gas ("LPG") used, multiplied by a relief rate of €19.89/1000 kilograms ("kg"); and (3) the volume of heating oil used, multiplied by a relief rate of €5.11/1000 liters and reduced by €750.[94] The actual tax relief is then calculated based on the savings on pension contributions.[95] The relief is granted only if the applying company demonstrates that it operated an energy management system during the application year.[96] Furthermore, the relief is granted only if the applying companies have fulfilled requirements for

[91] *Fluid End Blocks from Germany Prelim I&D Memo* at 21.
[92] Energy Tax Act, provided as Exhibit VIII-36.
[93] "Environmentally Harmful Subsidies in Germany," Federal Environment Agency (Oct. 2014) ("Environmentally Harmful Subsidies in Germany") at 17, provided as **Exhibit VIII-38.**
[94] *Fluid End Blocks from Germany Post-Prelim Memo* at 9, provided as Exhibit VIII-34.
[95] *Id.*
[96] *Id.*

energy intensity, based on an agreement between the FRG and German industry on increasing energy efficiency.[97]

Because they are energy-intensive producers, LAT and SKW likely benefit from this program. The Department has previously found this program to confer a countervailable subsidy.[98] Petitioner therefore respectfully requests that Commerce investigate this program and its impact on the German melamine industry.

1. Financial contribution

This program provides a financial contribution under Section 771(5)(D)(ii) of the Act, 19 U.S.C. § 1677(5)(D)(ii), in the form of revenue foregone that is otherwise due.

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E), and Section 351.509(a)(1) of the Department's regulations, 19 C.F.R. § 351.509(a)(1), that is equal to the amount of the tax savings.

3. Specificity

The Department has found this program to be *de facto* specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act, 19 U.S.C. § 1677(5A)(D)(iii)(I), because the tax rebates provided by this program were limited to 5,448 companies out of the 231,063 companies identified by the FRG as being in the manufacturing sector in 2018.[99] Petitioner has not found any information that would indicate that the number of companies using this program has increased relative to the number of companies in the manufacturing sector, such that the firms using the program are no longer limited in number.

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[97] *Id.*
[98] *Fluid End Blocks Final I&D Memo* at 7.
[99] *Fluid End Blocks from Germany Post-Prelim Memo* at 9, provided as Exhibit VIII-34.

I. Special Equalization Scheme – Reduced Surcharge Under The KWKG

The Department has previously found that the Special Equalization Scheme ("SES") – Reduced Surcharge Under the Combined Heat and Power Act, or Kraft-Wärme-Kopplungsgesetz ("KWKG"), provides a countervailable benefit to certain energy intensive manufacturers in Germany.[100] The purported purpose of the KWKG surcharge is to allocate the costs of the roll-out of high efficiency combined heat and power plants appropriately.[101] Certain "electricity-intensive undertakings in the manufacturing sector" ("EIUs") qualify for a reduction of their payments of the KWKG surcharge.[102] This scheme under the KWKG limits the burden resulting from the surcharge for undertakings with intensive electricity costs, railway operating undertakings, power generation from blast furnace gases, and electricity used for the production of so-called "green," renewable hydrogen.[103] The limitation of the KWKG surcharge for EIUs is linked by law to BAFA's decision about the limitation of each undertaking's EEG surcharge.[104]

In the investigation of *Fluid End Blocks From Germany*, the Department determined that the FRG entrusts or directs, through an explicit and legal mandate under the SES, certain private entities to provide a financial contribution in the form of revenue forgone by not collecting the KWKG surcharge from EIUs, within the meaning of Sections 771(5)(B)(iii) and (D)(ii) of the Act.[105] Furthermore, the Department also determined that the KWKG surcharge under the SES is *de jure* specific pursuant to Section 771(5A)(D)(i) of the Act.[106] Specifically, the EEG, under

[100] *Forged Steel Fluid End Blocks from the Federal Republic of Germany: Preliminary Results and Partial Recission of the Countervailing Duty Administrative Review; 2022*, 89 Fed. Reg. 8407 (February 7, 2024) at 16 ("*Fluid End Blocks from Germany 2AR Prelim. I&D Memo*").
[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*

which the application for KWKG surcharge reductions are applied, identifies specific industrial sectors, including manufacturers of fertilizers and nitrogen compounds.[107]

1. Financial contribution

This program provides a financial contribution under Sections 771(5)(B)(iii) and 771(5)(D)(ii) of the Act, 19 U.S.C. §§ 1677(5)(B)(iii) and 1677(5)(D)(ii), in the form of revenue foregone that is otherwise due. Specifically, as the Department found in *Fluid End Blocks From Germany*, the FRG entrusts and directs certain private entries to provide a financial contribution by not collecting the KWKG surcharge from EIUs.[108]

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E), and Section 351.509(a)(1) of the Department's regulations, 19 C.F.R. § 351.509(a)(1), that is equal to the amount of the KWKG surcharge that the recipient is exempted from paying.

3. Specificity

This program is *de jure* specific within the meaning of Section 771(5A)(D)(i) of the Act, 19 U.S.C. § 1677(5A)(D)(i), because the subsidy is limited by law to certain qualifying enterprises, namely the companies specified in Annex 4 of the Renewable Energy Sources Act.[109]

J. Concession Fee Ordinance Relief

The Department found the Concession Fee Ordinance Relief[110] to be countervailable in the investigation of *Fluid End Blocks From Germany*.[111] According to Section 46(1) of the

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[107] Renewable Energy Sources Act (EEG 2021), Annex 4 (pdf page 60) provided as **Exhibit VIII-39.**
[108] *Fluid End Blocks from Germany 2AR Prelim. I&D Memo* at 16.
[109] *See,* Renewable Energy Sources Act (EEG 2021), Annex 4 (pdf page 60) provided as Exhibit VIII-39.
[110] Concession Fee Ordinance or Konzessionsabgabenverordung ("KAV") Relief.
[111] *Fluid End Blocks from Germany Final I&D Memo* at Comment 8.

Energy Industry Act (Energiewirtschaftsgesetz or "EnWG"), municipalities must make their public transport routes available for the laying and operation of power lines and gas pipelines, including remote control lines for the control of the system and accessories for the direct supply of final consumers with energy in the area of the municipality, by contract and on a non-discriminatory basis.[112] Section 2 of the Concession Fees Ordinance on Electricity and Gas (Konzessionsabgabenverordnung or "KAV") determines the upper limits for the concession fees depending on different criteria.[113]

Under this program, NOs, which lay and operate powerline and gas pipes along public transportation routes, must negotiate and pay concession fees to the municipality responsible for the public routes.[114] Both parties agree on a concession fee that the NOs must pay to the municipality and NOs are permitted to recoup this cost of the concession fees by passing the fee onto network users.[115] NOs receive exemptions in the concession fees they pay to the municipality associated with certain special customers that qualify for the concession fee relief.[116] Although the NOs may, or may not, pass on to their customers the concession fees actually paid to the relevant municipalities (there is no legal obligation to do so), the Department found that the NOs, in practice, pass the concession fee on to users of the network.[117]

According to Section 2(4) of the KAV, concession fees for electricity supplies to special contract customers may not be agreed or paid if the average price per kilowatt-hour in the calendar year is lower than the average revenue per kilowatt-hour from the supply of electricity to all special contract customers.[118] The relevant price is the price excluding value-added tax

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[112] Relevant excerpts from the Energy Industry Act are provided as **Exhibit VIII-40**.
[113] Relevant excerpts from the Concession Fee Ordinance on Electricity and Gas are provided as **Exhibit VIII-41**.
[114] *Fluid End Blocks from Germany 2AR Prelim. I&D Memo* at 19.
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *See* Section 2(4) of the Concession Fee Ordinance on Electricity and Gas, provided as Exhibit VIII-41.

published in the official statistics of the FRG for the penultimate calendar year.[119] Utility companies and municipalities may agree on higher Marginal Prices.[120] The Marginal Price comparison is carried out for the delivery quantity of each supplier at the respective operating site or point of delivery, also taking into account the grid usage fee.[121]

In the *Fluid End Blocks From Germany* investigation, the Department determined that the FRG entrusts or directs the NOs to provide a financial contribution to the special contract customers in the form of revenue foregone, by requiring the NOs to exempt certain customers from paying the concession fee and also exempting the NOs from paying a portion of the fee due to the municipality.[122] Section 771(5)(B)(iii) of the Act, 19 U.S.C. § 1677(5)(B)(iii), provides that a subsidy is conferred when an authority entrusts or directs a private entity to make a financial contribution that provides a benefit, if providing the financial contribution would normally be vested in the government and the practice does not differ in substance from the practices normally followed by governments. In this instance, the FRG entrusts or directs the NOs to provide a subsidy.

In order to qualify for relief under this program, a company must be a "special contract customer," not a tariff customer for the grid operator, and the company's average electricity price must be lower than the average price paid by the grid operator's special contract customers.[123] Despite significant research, Petitioner was not able to determine whether LAT or SKW are "special contract customers," or whether the company's average electricity price is lower than the average price paid by the grid operator's special contract customers. Nonetheless, Petitioner

[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Fluid End Blocks from Germany Post-Prelim Memo* at 13, provided as Exhibit VIII-34.
[123] *See* Section 2(4) of the Concession Fee Ordinance, provided as Exhibit VIII-41.

believes it is likely that LAT and SKW meet both criteria because they are both in energy-intensive industries.

1. Financial contribution

As the Department found in *Fluid End Blocks From Germany*, the FRG entrusts and directs certain private entities (*i.e.,* the NOs) to provide a financial contribution to special contract customers in the form of revenue foregone, by not collecting concession fees.[124] Accordingly, this program provides a financial contribution in the form of revenue foregone that is otherwise due, under Sections 771(5)(B)(iii) and 771(5)(D)(ii) of the Act, 19 U.S.C. §§ 1677(5)(B)(iii) and 1677(5)(D)(ii).

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E) and Section 351.503(b)(2) of the Department's regulations, 19 C.F.R. § 351.503(b)(2), that is equal to the amount of the concession fee reduction under the KAV.[125]

3. Specificity

The Department has found this program to be *de facto* specific within the meaning of Section 771(5A)(D)(iii)(I) of the Act, 19 U.S.C. § 1677(5A)(D)(iii)(I), because the recipients of the subsidy are limited in number. Specifically, only special contract customers are eligible for benefits under this program.[126]

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124 *Fluid End Blocks from Germany Final I&D Memo* at 13.
125 *Id*. at 14.
126 *Id.*

VII. ENVIRONMENTAL SUBSIDIES

A. Free Allocation of European Union Emissions Trading System Allowances

Under the European Union Emissions Trading System ("ETS"), the FRG provides free emissions allowances to facilities with significant greenhouse gas emissions in Germany.[127] The ETS was established by EU Directive 2003/87/EC ("ETS Directive") and went into effect in 2015, as a "cap and trade" system of emissions allowances that is intended to limit the overall amount of greenhouse gas emissions from EU producers.[128] At the end of each year, emissions-intensive installations that are subject to the ETS program, (roughly 11,000 heavy emissions installations across the EU), are required to surrender emissions allowances to cover their emissions output for the previous year; one allowance covers the equivalent of one ton of carbon emissions.[129] These subject installations are able to obtain allowances through three basic methods: (1) receipt of freely allocated emissions allowances from their member state government, (2) purchase of emissions allowances through an EU regulated auction, or (3) purchase of allowances from private entities in a secondary market.[130] The EU ultimately controls the provision of freely allocated allowances to covered installations. According to the ETS Directive:

> {a}s provided for in Article 10a of the ETS Directive, it is the Commission, who adopts the rules for the allocation of allowances for free. It decides whether the allocation of the amounts is in accordance with these fully-harmonised rules and uploads the allocation tables into the Registry, from which point they are delivered to the operators. Thus, the allocation is based on harmonised free allocation rules and benchmarks set by law at European level and no individual Member State can modify these quantities.[131]

[127] *Fluid End Blocks from Germany Prelim. I&D Memo* at 25.
[128] *Id*. The ETS Directive is provided as **Exhibit VIII-42**.
[129] *Fluid End Blocks from Germany Prelim. I&D Memo* at 25.
[130] *Id.* at 25-26.
[131] *See,* ETS Directive is provided as Exhibit VIII-42.

Additionally, the channels of attribution of the free allowances and of the allowances to be auctioned are separated "*ab origin,*" and they cannot be mixed. Furthermore, Member States cannot dispose of the free allowances that are allocated to the individual operators.[132] EU Member States are required by the governing directive to distribute, at no charge, to all installations subject to the ETS program an amount of standard emissions allowances based on a complex calculation that includes a comparison of a subject installation to the benchmark performance of the most efficient, least polluting, installations in each sector under the terms of the ETS program. During the POI in the original investigation in *Fluid End Blocks From Germany*, all installations, except power stations, are freely allocated allowances to cover 44.2 percent of the emissions of the most efficient installations during the POI.[133] However, for a portion of the 11,000 installations that are deemed to be at significant risk of carbon leakage *i.e.,* at risk of being unable to cover the higher environmental costs of compliance under the ETS program, the Member State provides additional free allowances to meet 100 percent of the allowances needed by the benchmark installations during the POI.[134]

"Carbon leakage" refers to a hypothetical situation where companies transfer production to countries with weaker climate laws in order to lower their costs.[135] Under the EU ETS rules, industrial companies that are believed to be at risk of carbon leakage are awarded free ETS allowances.

Under the current phase of the EU ETS program, known as Phase IV, which runs from 2021 until 2030, free emission allowances are available to the companies on the carbon leakage

[132] *Fluid End Blocks from Germany Prelim. I&D Memo* at 26.
[133] *Id.*
[134] *Id.*
[135] *See* Carbon leakage mythbuster: Germany, Carbon Market Watch, March 14, 2016, provided as **Exhibit VIII-43**.

list.[136] For the sectors determined to be at significant risk of carbon leakage, the EU Member States continue to provide additional free allowances to meet 100 percent of the allowances needed by the benchmark installations.[137] During Phase III of the ETS programs, installations not on the carbon leakage list were allocated emission allowances to cover 44.2 percent of the emissions of the most efficient installations in the sector. In Phase IV (which covers the presumptive POI), installations not on the carbon leakage list are allocated emission allowances to cover 30 percent of the emissions of the installations.[138]

LAT and its cross-owned affiliated input supplier, SKW, are in industry sectors deemed to be at risk of carbon leakage.[139] Specifically, both companies belong to the industry category "Manufacture of fertilizers and nitrogen compounds."[140] Both companies are also listed in the national allocation tables submitted to the Central Administrator of the European Union Transaction Log.[141] Finally, SKW is one of the largest emitters of greenhouse gases in Germany.[142] A World Wildlife Fund study ranked SKW's two ammonia facilities as the 23rd and 24th largest polluters in Germany among all sectors, and the third and fourth largest within the chemical sector.[143]

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136 *Fluid End Blocks from Germany 2AR Prelim. I&D Memo* at 21.
137 *Id.*
138 *Id.*
139 *See* European Commission, Commission Notice, Preliminary Carbon Leakage List, 2021-2030, Official Journal of the European Union, 2018/C 162/01 (May 8, 2018) at C 162/06, provided at **Exhibit VIII-44**.
140 *Id.*
141 *See* Commission Decision of 29 June 2021 Instructing the Central Administrator of the European Union Transaction Log to enter the national allocation tables of Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden in the European Union Transaction Log, Official Journal of the European Union, C 302/2021 (June 29, 2021) at Annex I p. 36/205 (for SKW Piesteritz) and p. 61/205 (for Borealis Agrolinz Melamine Deutschland, the predecessor company to LAT).
142 *Dirty Thirty – Industrial sector emissions in Germany,* World Wildlife Fund Germany in cooperation with Öko-Institure e.V. (2023), provided as **Exhibit VIII-45.**
143 *Id.* at Table 1 and Table 4.3.

Because LAT and SKW are listed on the carbon leakage list, they received additional freely allocated emissions allowances beyond the standard rate of allocation. In the absence of these additional free allowances, these companies would have been required to cover their emissions by purchasing allowances either from the Member State government, from the auction, or from another private party with allowances to sell.

1. Financial contribution

As the Department found in *Fluid End Blocks From Germany*, the FRG is providing something of value to recipients without requiring payment and is therefore providing a financial contribution in the form of revenue foregone that is otherwise due, within the meaning of Section 771(5)(D)(ii) of the Act, 19 U.S.C. §§ 1677(5)(D)(ii).[144]

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E) and 19 C.F.R. § 351.503(b)(2), to the extent that the recipient is relieved of the obligation to purchase the additional allowances required to cover its carbon emissions for the year.[145]

3. Specificity

The Department has found this program to be *de jure* specific within the meaning of Section 771(5A)(D)(i) of the Act, 19 U.S.C. § 1677(5A)(D)(i), because EU Directive 2003/87/EC limits eligibility for this benefit to companies on the carbon leakage list.[146]

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[144] *Fluid End Blocks from Germany Prelim. I&D Memo* at 27.
[145] *Id.*
[146] *Id.*

B. European Emission Trading System – Compensation Of Indirect CO2 Costs

In the investigation of *Fluid End Blocks From Germany*, the Department found that the Compensation of Indirect CO2 Costs under the ETS provided a countervailable subsidy.[147] As noted above in Section VII.A., EU Directive 2003/87/EC (ETS Directive) established a "cap and trade" system of emissions allowances.[148] Electricity suppliers, due to the financial burden placed upon them by the emissions allowances, pass the increased cost onto the final consumers of electricity.[149] Under section 10a(6) of the ETS Directive and guidelines updated in a 2020 Communication from the European Commission, those sectors deemed to be at significant risk of carbon leakage with installations using high amounts of electricity are eligible to have these increased electricity prices financially compensated for by the Member State governments.[150] As discussed above in Section VII.A., LAT and SKW are on the list of companies that are at significant risk of carbon leakage and are therefore eligible to receive electricity price compensation for its installations.

Each individual EU Member State may establish, within the EU guidelines, that some of those funds raised from state auctions of emission allowances can be used to finance electricity price compensation for industry sectors deemed to be at a significant risk for carbon leakage.[151] For Germany, this program is administered by the German Emissions Trading Authority ("GETA"), which is part of the Federal Environment Agency.[152] Eligible companies must submit an application for approval to the GETA for the previous year's electricity expenses, and upon approval by the GETA, funds are administered directly to the company's bank account.[153]

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147 *Fluid End Blocks from Germany Final. I&D Memo* at 7-8.
148 The ETS Directive is provided as Exhibit VIII-42.
149 *Fluid End Blocks from Germany 2AR Prelim. I&D Memo* at 12.
150 *Id*.
151 *Fluid End Blocsk from Germany Post-Prelim Memo* at 6.
152 *Id.*
153 *Id.*

1. Financial contribution

As the Department found in *Fluid End Blocks From Germany*, the FRG provides a financial contribution to recipients in the form of a direct grant to eligible companies, which constitutes a direct transfer of funds under Section 771(5)(D)(i) of the Act, 19 U.S.C. 1677(5)(D)(i). [154]

2. Benefit

This program confers a benefit upon recipients within the meaning of Section 771(5)(E) of the Act, 19 U.S.C. § 1677(5)(E) and Section 351.504(a) of the Department's regulations, 19 C.F.R. § 351.504(a), that is equal to the amount of the grant.[155]

3. Specificity

The Department has found this program to be *de jure* specific within the meaning of Section 771(5A)(D)(i) of the Act, 19 U.S.C. § 1677(5A)(D)(i), because EU Directive 2003/87/EC limits eligibility for this benefit to companies on the carbon leakage list.[156]

[154] *Fluid End Blocks from Germany Post-Prelim Memo* at 6, provided as Exhibit VIII-34.
[155] *Id.*
[156] *Id.*

VIII. CONCLUSION AND REQUEST FOR INVESTIGATION

As demonstrated above, information reasonably available to Petitioner shows that LAT and its cross-owned affiliate SKW receive countervailable subsidies. Accordingly, Petitioner requests that the Department initiate a countervailing duty investigation of imports of melamine from Germany.

Respectfully submitted,

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